

EXHIBIT

#21

1 UNITED STATES BANKRUPTCY COURT
2 Case NO. 07-15195 (MS)

3 IN RE: BAYONNE MEDICAL CENTER:

4 ALLEN D. WILEN,

5 Plaintiff,

6 v.

7 BAYONNE/OMNI DEVELOPMENT
8 LLC, et al,

9 Defendants.

10 1 ORIGINAL

11 DEPOSITION OF:

12 ADOLPH WALTER

13 TRANSCRIPT of testimony as taken by and
14 before MELISSA A. HILDEMANN, a Certified Shorthand
15 Reporter Realtime and Notary Public of the State of
16 New Jersey, at the offices of GRUEN & GOLDSTEIN,
17 1150 West Chestnut Street, Union, New Jersey 07083,
18 on Monday, March 1, 2010, commencing at 10:04 in the
19 morning.

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1 Q. Brockman?

2 A. Herman Brockman.

3 Q. And the details, meaning what
4 they had in mind.

5 A. Pretty well this. Yes. I don't
6 know if it's in the appraisal there. Is there a
7 letter? Here. I asked -- that's where the
8 confusion came in. They asked me how much would
9 this be about.

10 Q. How much would you charge?

11 A. How much I would charge? And
12 from him talking about putting up a new building
13 on the land that was vacant, and I asked him, You
14 have construction plans and so on; and he was
15 unsure, but I gave a quote on doing a -- also a
16 construction, new construction there.

17 Q. On doing what about new
18 construction?

19 A. A nursing home they wanted to
20 build.

21 Q. But what was the proposal about,
22 this alternate proposal or additional proposal
23 that you made?

24 A. That I made?

25 Q. Yeah.

13

1 A. I was only interested in what I
2 would -- they were interested in how much I would
3 be charging for an appraisal.

4 Q. Okay.

5 A. It was a lot more than what it
6 wound up. And that's what that letter here -- I
7 asked Apsel to send me some kind of a thing
8 because after that meeting, they were all over the
9 place. They weren't specific like people that are
10 -- they were layman. So I was confused as to
11 actually what did they want me to do. Did they
12 want me to do an appraisal on what it would cost
13 for putting up a new -- a new building. Then I
14 quoted it. It was a lot more, maybe \$7,500, in
15 that range, I usually would charge for something
16 like that. So I called them up -- Marvin, I
17 called up -- I don't know if it was the same day
18 or next day -- to get a clarification. I asked
19 him to make up something, a list, and this is what
20 he made up and sent me.

21 Q. Okay.

22 A. And in here --

23 MR. GRUEN: We can mark this now.

24 (Exhibit Walter-4, Multiuse Medical
25 Arts Building, marked for identification.)

1 Q. So you say a couple days later
2 after that first meeting with Hausmann, Apsel and
3 Brockman, they sent you this document, Defendant
4 Walter-4, as you understood it, to further clarify
5 what they had in mind.

6 A. I needed a clarification as to
7 what they expected me to do. Actually, that's
8 what it comes down to.

9 Q. Okay. So you got this document
10 in response to your request to them for
11 clarification of what they wanted you to do.

12 MR. FALANGA: Object to the form.

13 Q. Is that correct?

14 A. I believe -- I believe that's
15 what he made up here, explaining everything here,
16 but it still had the nursing home in here. He's
17 talking about nursing -- all I did was then went
18 down, they were interested in a price, too, to
19 keep the price down. So --

20 Q. Price, meaning your fee?

21 A. My fee. They settled on that I
22 do as is --

23 Q. Appraisal.

24 A. -- appraisal, which is vacant
25 land and the building, two buildings on there.

15

1 They call it the phone building. And then there
2 was a building next to it, attached to it, but
3 separate, that was formerly a glass, auto glass,
4 but it was vacant.

5 Q. That's the warehouse building.

6 MR. FALANGA: Object to form.

7 Q. Was that warehouse building
8 one-story?

9 A. That's a one -- no, that's not
10 the one -- actually, the warehousing was in the
11 phone building. They had storage in there, and
12 they had the supplying utility, oil burners,
13 furnaces, small offices, but mostly a lot of
14 storage, a lot of wasted space that wasn't being
15 used, so to speak --

16 Q. Uh-huh.

17 A. -- but could be used for offices
18 when I was going through it.

19 Q. So after you received Defendant
20 Walter-4, is this correct, you then --

21 A. I called them up and talked to
22 him on the phone. I says, Listen, you know, this
23 here is -- is -- I still don't know. I says, I
24 think what you need -- I told them what I thought
25 would be good because he didn't have plans

1 available --

2 MR. FALANGA: Can I see?

3 THE WITNESS: Yes.

4 A. There was no plans available as
5 far as the new construction they were going to put
6 on there.

7 So I said, Why don't I do the -- do
8 it as vacant land as is, what you have there now.
9 Get a value on that. And when you get the plans,
10 or the contractors, or whoever, you know, get it
11 together and at least you know what the land is
12 and what you have there.

13 MR. FALANGA: What was marked is
14 Walter-2. I apologize. I was confused here.

15 THE COURT REPORTER: It was 2 -- so
16 1 was the subpoena, 2 is the report, 3 is the
17 September 16th letter and 4 is the whatever is
18 there.

19 MR. FALANGA: That's it. Thank
20 you.

21 THE WITNESS: Am I confusing or
22 what?

23 MR. GRUEN: No, no. It's fine.

24

25 EXAMINATION BY MR. GRUEN:

1 Q. When you made the suggestion,
2 what was the response, if any?

3 A. Well, they asked how much. And I
4 quoted, I think it was 40 -- \$4,800 for it. And I
5 came at -- the price I came to is because usually
6 in Bayonne or Jersey City, Hudson County, if it
7 was, like, a mixed-use, with a store on the bottom
8 and maybe three/four commercial units --
9 apartments above, I would charge about 2,000. So
10 I figured two floors...

11 Q. Any further discussions about the
12 scope of your assignment in that next call?

13 MR. FALANGA: Object to the form.

14 A. My what?

15 Q. The scope of your assignment.
16 What it is that you were going to be doing.
17 Anything else that you discussed about what you
18 were going to be doing, as opposed to your fee, in
19 the next call?

20 A. I put it -- I think I have it in
21 my -- about a fee?

22 Q. No. Other than the fee. The
23 assignment, what you were going to be doing. Any
24 further discussion about --

25 A. I told them I was going to do it

1 as is.

2 Q. Let me -- let take you to --

3 A. You might want that. I have a
4 copy.

5 Q. I'm going to come back to it.

6 MR. FALANGA: We're going to need
7 to keep the original exhibits here.

8 THE WITNESS: Oh, I'm sorry.

9 MR. FALANGA: That's okay. Just
10 until the conclusion of the deposition.

11 THE WITNESS: I have it here. Just
12 stamp it Copy, so I don't get them mixed up.

13
14 EXAMINATION BY MR. GRUEN:

15 Let me show you on your appraisal
16 report, Walter-2. The pages are not numbered, but
17 it's the first series of photographs. The one on
18 the top is called, "Subject, front view," and the
19 one on the bottom is called "Subject, front view."

20 A. Yes.

21 Q. I referred earlier in my
22 questioning to a one-story warehouse. Does the
23 photograph on the bottom reflect what you saw at
24 the site?

25 A. The bottom one does, yes.

1 Q. Okay. Is that -- would it be
2 fair to describe that as a one-story warehouse?

3 MR. FALANGA: Object to the form.

4 A. It was vacant, and I don't know
5 if they were using it as a warehouse. It had an
6 overhead door. I think they were using storage
7 space. If it was locked, I couldn't get in, so
8 this is from memory. I looked in through the
9 glass.

10 Q. Now, did you have any further
11 conversations with either Brockman, Hausmann or
12 Apsel beyond the one that you just described and
13 before you undertook the appraisal?

14 A. Just say that again.

15 Q. Any further conversations with
16 any of these gentlemen from Bayonne Medical Center
17 before you went out and did the appraisal?

18 A. Before I went out, no.

19 Q. Did they ever tell you that they
20 were proposing to sell the property?

21 A. No, they wanted to put a
22 construction -- a nursing home on it.

23 Q. Okay. So they did not tell you
24 that they were interested in selling the property?

25 MR. FALANGA: Object to the form.

1 A. No. I don't think they knew
2 themselves what they wanted to do...

3 MR. FALANGA: It's all on the
4 record, so you know.

5 THE WITNESS: It's --

6 MR. FALANGA: I understand.

7 THE WITNESS: I was very confused
8 with them. They were amateurs, so to speak.

9 Q. How were they amateurs?

10 A. Amateurs?

11 Q. Yeah.

12 A. They were all over the place. I
13 couldn't -- that's why I had to call up and find
14 out what exactly do you want, you know, as far as
15 the appraisal is concerned.

16 Q. But ultimately then, if I
17 understand you correctly, after the clarification,
18 you determined that the facts set forth in
19 Defendant Walter-4 would not be the basis for your
20 appraisal report; is that correct?

21 MR. FALANGA: Object to the form.

22 Q. You can answer. So you ignored
23 for purposes of the appraisal what's set forth in
24 that document, correct?

25 A. Well, yeah. I got clarification

1 on it.

2 Q. But the facts set forth in that
3 document were not used by you in connection with
4 the generation of the appraisal report.

5 A. No, no.

6 MR. FALANGA: Objection to the
7 form.

8 Q. Now, there's a series of
9 handwritten notes that I'm taking out of the file
10 that you produced a moment ago in response to the
11 Document Demand No. 1. They are on lined, white
12 sheets. These are the documents that you
13 mentioned that you put the red pen on. And I'm
14 going to have these marked as one exhibit.

15 (Exhibit Walter-5, Handwritten
16 Notes, marked for identification.)

17 Q. Last sheet, on the next-to-last
18 sheet there is a diagram. Are these the buildings
19 that comprise the subject of your appraisal?

20 A. Yes. This is --

21 MR. FALANGA: Object to the form.

22 A. This is a -- the thing you just
23 pointed out before.

24 Q. Referring to the building on the
25 left side?

1 the neighborhood from -- that were very similar
2 sized properties and so -- land, frontage in the
3 central business district.

4 Q. So the answer to my question
5 would be, that the source for the commercial
6 rental shown on Page 48 of your report was your
7 own files?

8 A. From my own files.

9 MR. FALANGA: Objection to form.

10 Q. Okay. And did your own files
11 contain copies of the leases for these commercial
12 rental properties?

13 A. If there were leases, yes.

14 Q. Do you know for a fact that your
15 file contained copies of the leases for these
16 properties?

17 A. I always ask for them.

18 Q. Do you know for a fact that your
19 files contained --

20 A. No, the fact -- I don't know
21 that.

22 Q. Do you know what the dates -- if
23 there were leases, do you know what the date of
24 the lease was for 738 Broadway?

25 A. No.

1 Q. Is there anything in the file
2 that you brought today that would reflect that you
3 referred to or considered a lease for 738 Broadway
4 when rendering the numbers on Page 48?

5 A. No.

6 Q. Is there anything that shows that
7 you referred to a lease for 1050 Broadway, when
8 rendering the numbers on Page 48 for that property
9 --

10 A. No.

11 Q. -- and the same for 360 Broadway?

12 MR. FALANGA: Object to form.

13 Q. And the same for 360 Broadway?

14 A. Yes, no.

15 MR. FALANGA: Objection.

16 Q. Excuse me. Yes, meaning there is
17 nothing that indicates that you referred for
18 leases --

19 MR. FALANGA: Objection to form.

20 Q. -- is that correct?

21 A. I don't -- no, I don't have it.

22 Q. Okay. Do you have anything in
23 your file at all, in the appraisal file, that
24 shows that you, in fact, referred to leases when
25 rendering the numbers on Page 48 for any of these

1 three properties?

2 MR. FALANGA: Object to the form.

3 A. No.

4 Q. Okay. Do you have a recollection
5 for a fact, you're under oath, that you refer to
6 the actual leases when rendering the numbers on
7 Page 48?

8 MR. FALANGA: Object to the form.

9 A. I don't know -- when I --

10 Q. Sir, that's a yes-or-no answer.

11 A. No. No.

12 Q. Do you know for 738 Broadway,
13 what the date of the lease was, if it was under a
14 lease?

15 A. I don't know that.

16 Q. Do you know what the terms of the
17 lease were, if it was under lease?

18 A. No. Not --

19 Q. So you --

20 A. Not now.

21 Q. Do you know whether it was gross
22 or net?

23 A. Not for sure.

24 Q. Okay. Do you know if it was for
25 an office building or some other type of use?

1 A. Let me just do something here.

2 Let me just see. Where is the --

3 THE WITNESS: I shouldn't talk.

4 The pictures and the details -- Explanation of
5 adjustment. Let me go through here.

6 Q. There are no adjustments under
7 the Income and Expenses Functions; isn't that
8 correct?

9 A. That's correct. But let me just
10 see here, they may be in my files.

11 Q. Are there files of yours that you
12 did not bring with you today in response to the
13 subpoena? Sir?

14 A. I'm thinking. It takes me a
15 little while, please. In five years, I have
16 depreciated 30 percent, also.

17 Q. Is that functional, external, or
18 --

19 A. It's getting to be everything.

20 Q. Functional, external and
21 obsolescence. That's the word.

22 A. The little hair helps.

23 Q. So, again, my question was, is
24 there any part of your file that you did not
25 produce today in response to the subpoena?

1 A. As standing, the -- the
2 improvements to the land and the improvements, the
3 building.

4 Q. Yes.

5 A. Standing there now, if it's --
6 anything happens to it in the meantime, separate
7 valuation of the land and the -- and the building.

8 Q. By "something happens to it,"
9 what do you mean?

10 A. Burns down.

11 Q. So if the building --

12 A. Or is demolished.

13 Q. For instance, if the building
14 were demolished or not there -- are you saying if
15 the building were demolished or not there, that
16 this appraisal report would not be reliable?

17 A. Well --

18 MR. FALANGA: Object to the form.

19 A. No, I don't -- utilization, for
20 use, it wouldn't be used.

21 Q. So it would no longer be under
22 the existing program of utilization if the
23 building were to be removed, and, therefore, this
24 appraisal report would not be reliable; is that
25 what you're saying?

1 MR. FALANGA: Object to form.

2 A. No, it may change the whole
3 thing.

4 Q. The whole picture.

5 MR. FALANGA: Object to the form.

6 A. Yeah.

7 Q. And the picture means the whole
8 valuation process, right?

9 MR. FALANGA: Object to the form.

10 A. No. That's not what I'm saying.

11 Q. Okay. What are you saying then?

12 A. I'm saying that the value may be
13 different --

14 Q. Uh-huh. So value is the same as
15 valuation --

16 A. -- utilization, the use of it.

17 THE COURT REPORTER: One at a time,
18 guys.

19 THE WITNESS: I'm sorry.

20 Q. So, if the building were removed,
21 that would change the valuation process and result
22 in a different valuation?

23 MR. FALANGA: Object to the form.

24 A. I appraised this as is.

25 Q. Okay. And therefore, if the

1 building were demolished or removed, it would
2 result in a different valuation?

3 MR. FALANGA: Object to form.

4 A. I don't know. That's speculation
5 on my part.

6 Q. Well, it's speculation on your
7 part. And yet, didn't your report in part rely
8 upon the reproduction costs of the building?

9 MR. FALANGA: Object to the form.

10 A. No. I went out and --

11 Q. Didn't you do a cost analysis?

12 A. Huh?

13 Q. Didn't you do a cost analysis?

14 A. Yes, I have that here. We didn't
15 --

16 Q. Okay. And wasn't that a cost
17 analysis of the reproduction cost to reproduce the
18 existing building?

19 A. Yes.

20 MR. FALANGA: Object to the form.

21 Q. If the existing building were
22 demolished, would that impact your valuation?

23 MR. FALANGA: Object to the form.

24 A. I wasn't asked for that. I was
25 ask to do an appraisal as is --

1 Q. If you had been -- if you had
2 been told --

3 A. -- of the existing properties.

4 Q. If you had been told that the
5 existing building was going to be demolished,
6 would that affect your valuation?

7 A. If I were told it would be? I
8 don't know if I would do the appraisal.

9 Q. Because?

10 A. Because it's not my -- my field.

11 Q. And when you say it's not your
12 field, you wouldn't be --

13 A. It's not my expertise.

14 Q. You wouldn't be qualified then,
15 as an expert, to deliver an valuation report if
16 the building were going to be demolished; is that
17 what you're saying?

18 MR. FALANGA: Object to form.

19 A. I would have never done an
20 appraisal report like that.

21 Q. Okay.

22 Let's continue under the heading
23 Important Definitions. The definition of market
24 value, I'm going to read it into the record.

25 "The most probable price which a

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1 property should bring in in a competitive and open
2 market, under all conditions requisite to a fair
3 sale, the buyer and seller each acting prudently
4 and knowledgeably, and assuming the price is not
5 affected by undue stimulus. Implicit in this
6 definition, is the consummation of a sale as of a
7 specified date and passing of title from seller to
8 buyer under conditions." Then you list five
9 conditions. I'm not going to ask you about the
10 conditions.

11 If both the buyer and the seller
12 knew at the time of the sale that the improvement
13 was going to be torn down, would the valuation --
14 should the valuation not reflect that?

15 MR. FALANGA: Object to form.

16 A. I did it as is.

17 Q. Okay. But within your
18 definition, the buyer and seller, each acting
19 prudently and knowledgeably, if each of the buyer
20 and the seller knew at the time of the sale that
21 the building was going to be torn down, would that
22 affect valuation?

23 MR. FALANGA: Object to the form.

24 A. I was not aware of a buyer.

25 Q. I'm not criticizing you. I'm

1 saying, if the buyer and the seller knew at the
2 time of the sale that the building was going to be
3 torn down, would that affect valuation?

4 MR. FALANGA: Object to the form.

5 A. I'd say it's a good question, and
6 I don't think I could answer it because -- no, I
7 can't answer that question. It's an opinion.

8 Q. If both the buyer and the seller
9 knew at the time of the sale that the building was
10 going to be torn down, shouldn't the valuation be
11 based upon land value less demolition expenses?

12 MR. FALANGA: Object to the form.

13 A. I didn't consider that. I wasn't
14 informed that of a buyer or seller.

15 Q. But I'm saying if the buyer and
16 the seller knew it was going to be torn down,
17 wouldn't that be the appropriate approach to the
18 valuation.

19 A. That's beyond my expertise. I
20 would have look to the details.

21 THE COURT REPORTER: I -- would
22 have to --

23 Q. THE WITNESS: Oh, I'm sorry.

24 THE COURT REPORTER: I didn't hear
25 -- you have to give the rest of you answer. "That's

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1 Q. Look at Page 53 of your report.

2 A. Page 53?

3 Q. Yeah. I'm going to read the last
4 two paragraphs.

5 "The Cost approach begins with an
6 estimation of land value and estimate of
7 reproduction or replacement costs new.
8 Depreciation from all causes is then estimated and
9 subtracted from the estimate of reproduction or
10 replacement cost new. The cost approach provides
11 a reliable indication of value when the appraised
12 improvements are new or are relatively new."

13 Would you agree with that so far? Yes?

14 A. Yes.

15 Q. "And do not suffer items of
16 functional or external obsolescence. When this is
17 not the case, the value indicated by this approach
18 becomes less reliable."

19 So is that what you mean when you
20 say that an 80-year-old building is not typically
21 the subject of a cost approach, because of the
22 functional or external obsolescence that has to be
23 factored into the conclusion?

24 MR. FALANGA: Object to the form.

25 A. I'm say -- I'm saying what I have

1 written here, and I don't know what...

2 Q. Is the problem with the cost
3 approach with an 80-year-old building that the --

4 A. Where does 80-year-old building
5 come in here?

6 Q. Is there a problem using the cost
7 approach for an 80-year-old building --

8 MR. FALANGA: Object to the form of
9 the question.

10 A. I don't know --

11 Q. Is the cost approach reliable
12 when using an 80-year-old building, given the
13 functional and external and physical depreciation?

14 THE COURT REPORTER: Hold on.

15 MR. FALANGA: Object to the form of
16 the question. Sorry.

17 A. Hold on a minute, I got to --

18 Q. We're going to go back. "The
19 cost approach" -- I'm, again, reading from Page
20 53. "The cost approach provides a reliable
21 indication of value when the appraised
22 improvements are new or are relatively new." Is
23 an 80-year-old building, in your estimation, new
24 or relatively new?

25 MR. FALANGA: Object to the form of

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1 the question.

2 A. It is not.

3 Q. Okay. Now, let me continue.

4 "When this is not the case, the value indicated by
5 this approach becomes less reliable." Does that
6 mean then for a building, that's not new or
7 relatively new, that the value indicated by the
8 cost approach becomes less reliable?

9 MR. FALANGA: Object to the form.

10 A. Where is this?

11 Q. Page 53, second paragraph.

12 A. I have to read it to myself --

13 Q. Go ahead, take your time.

14 A. If you don't mind.

15 Q. Sure.

16 I'll do it from scratch. Reading
17 again from the same paragraph, then, Mr. Walter,
18 "When a building is not new or relatively new, the
19 value, indicated by" -- you say that the value
20 indicated by this approach becomes less reliable,
21 what do you mean by that?

22 A. I mean there's a depreciation
23 involved.

24 Q. And the older the building, the
25 more depreciation; is that correct?

1 MR. FALANGA: Object to the form.

2 Q. Is that correct?

3 A. Not always.

4 Q. Okay. Then what is it about an
5 old building that makes the cost approach less
6 reliable?

7 A. Because the cost to build,
8 rebuild or replace would change.

9 Q. Well, in the next sentence --

10 A. It is more costly to... .

11 Q. In the next sentence, you
12 actually answered my question, don't you? You
13 say, "The primary weakness of the cost approach is
14 in the accurate reflection of the total accrued
15 depreciation on the total property value, which by
16 its nature, is very difficult to measure. The
17 physical age of the subject improvements decreases
18 the accuracy of the cost approach to value." You
19 would agree with that?

20 A. Well, yes.

21 MR. FALANGA: Object to form.

22 Q. And therefore, an 80-year-old
23 building is -- withdrawn.

24 A. I don't see an 80-year old here,

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1 though.

2 Q. Well, you told us that in your
3 report, didn't you?

4 A. 80-year old --

5 Q. Excuse me.

6 A. I'm sorry.

7 Q. Would you agree that employment
8 of the cost approach valuation of an 80-year-old
9 building is unreliable because of the
10 depreciation, which is so difficult to measure?

11 MR. FALANGA: Object to the form of
12 the question.

13 A. I don't know if I can agree with
14 that.

15 Q. Do you agree that the primary
16 weakness of the cost approach with a building that
17 is not new or relatively new, is an accurate
18 reflection of total accrued depreciation, which is
19 difficult to measure, and that the physical age of
20 the improvement decreases the accuracy of the cost
21 approach to value?

22 MR. FALANGA: Object to the form of
23 the question.

24 A. I believe that -- when an
25 appraiser does this approach, his experience comes

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1 into play, and it is known that there is a certain
2 amount of experience from past appraisals that
3 were done, to take that and use his expertise to
4 come up with a reasonable opinion. That's what I
5 believe.

6 Q. So are you saying then that that
7 experience permits you, even with an 80-year-old
8 building, to --

9 A. Yes.

10 Q. -- let me finish the sentence --

11 A. I do believe that.

12 Q. -- to reliably use the cost
13 approach?

14 MR. FALANGA: Object to the form of
15 the question.

16 A. I can't answer that question
17 anyway.

18 Q. The next paragraph says, "There
19 are additional weaknesses in employing the cost
20 approach." And I'm skipping down to the next
21 sentence. "In addition, accurately estimating
22 accrued depreciation in improvements, which are
23 not of new or recent construction, is difficult to
24 measure and speculative in nature amidst changing
25 market conditions."

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1 A. The question again, please.

2 MR. GRUEN: I'll have the question
3 read back.

4 (Record read.)

5 MR. FALANGA: Objection to the form
6 of the question.

7 A. I don't know about inconclusive.

8 Q. Did you use the word
9 "inconclusive" on Page 40 of your report?

10 A. Yes.

11 Q. Okay. So are you saying that
12 that's accurate or inaccurate, that statement?
13 Are you saying that your report is inaccurate in
14 that respect?

15 MR. FALANGA: Objection to the
16 form.

17 A. No, I'm not saying that. I'm
18 saying it's a poor --

19 Q. Poor choice of words?

20 A. Yes.

21 Q. Okay. If you knew that the
22 parties intended, with this property, to tear down
23 the building and not reconstruct it, would you not
24 have employed the cost reproduction analysis?

25 A. I don't know.

EXHIBIT
#22

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER,

ORIGINAL

Debtor, :
BAYONNE MEDICAL CENTER, :
Debtor and :
Debtor-in-Possession; and : DEPOSITION OF:
ALLEN D. WILEN, in his : ROBERT S. BURNETT
capacity as Liquidating :
Trustee and Estate. :
Representative for the Estate : VOLUME II
of Debtor, Bayonne Medical : (Pages 36-115)
Center,

Plaintiff, :

-vs-

BAYONNE/OMNI DEVELOPMENT, :
L.L.C., a New Jersey limited :
liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of CONNELL FOLEY, L.L.P.,
85 Livingston Avenue, Roseland, New Jersey, on
WEDNESDAY, DECEMBER 15, 2010, commencing at 10:02
a.m., pursuant to Notice.

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1 It was higher than the 2,000,000. I don't recall
2 the exact amount. I think it was somewhere in the
3 vicinity of \$5,000,000.

4 Q. And as you were contemplating the due
5 diligence that would be required by the financing
6 agency, were you aware that there had been an
7 earlier appraisal that showed a higher value?

8 A. I was aware of that, yes.

9 Q. Did you consider communicating that
10 to the financing authority, the Facilities Authority
11 I should say?

12 A. We never got to that stage. The
13 transaction was canceled before we ever got into the
14 details of due diligence.

15 Q. I see. Now, the report of Cushman &
16 Wakefield dated November 22, 2006, RB-2, contains a
17 marking on Page 11 indicating that it's a draft.
18 Can you explain why it was marked "Draft"?

19 A. I don't know why Cushman & Wakefield
20 marked it "Draft." I assume it's because it was not
21 considered to be the final document.

22 Q. Were there any communications that
23 you were aware of to secure a final document?

24 A. I don't believe so, because what
25 happened was by the time this document, this draft

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1 document was issued, the reason for its necessity
2 was over. In other words, prior to November 22nd,
3 the bond transaction was put off.

4 Q. I see. So there was no need to have
5 Cushman & Wakefield finalize its report?

6 A. That's correct.

7 Q. Would that have entailed an
8 additional expense to Cushman & Wakefield?

9 A. I don't know.

10 Q. When you received this report, did
11 you have an understanding as to whether the
12 indication of a \$2,000,000 value, which appears on
13 Page 10, was anything other than a good-faith
14 professional analysis of the value of that property?

15 MR. PIZZI: Object to form.

16 MR. CAMBRIA: I object to form of the
17 question. It hasn't been established yet, as far as
18 I can recall, as to when he would have received
19 this. I know it's dated November 22nd. I'm not
20 sure that it's been established that Mr. Burney
21 received it on or about that date. You might want
22 to check that first.

23 MR. COPLON: Mr. Cambria's point is
24 well taken. Withdraw the question.

25 Q. When did you receive this document?

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1 A. I don't recall the precise date. I
2 believe what happened was it was e-mailed to D.B.
3 Ross and D.B. may have forwarded the e-mail to me.
4 It was sometime in at least November 22nd. It may
5 have been a couple of days afterward. I don't
6 recall the exact day.

7 Q. But you got this document relatively
8 contemporaneously with the date that appears on it?

9 A. Relatively, and, again, I can't tell
10 you what that means. Within several days probably.

11 Q. Well, can we establish this? Did you
12 have knowledge of and possession of this document or
13 awareness of this document prior to December, the
14 first week in December, when the Omni/Bayonne
15 transfer occurred?

16 A. Yes.

17 Q. You knew about it?

18 A. Yes.

19 Q. And you knew at the time that the
20 report contained an opinion, or at least a draft
21 opinion of \$2,000,000, you were aware of that?

22 A. Yes.

23 Q. And you were about to go in on behalf
24 of a client and do a closing where the purchase
25 price was \$2,000,000?

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1 A. Yes.

2 Q. Did you communicate this report to
3 anyone at the hospital?

4 A. I personally did not. I believe D.B.
5 Ross probably did.

6 Q. To whom?

7 A. I don't know for certain. I would
8 suspect it was to Marv Apsel.

9 Q. Mr. Brockman?

10 A. I don't know. I doubt it.

11 MR. PIZZI: I just want to note that
12 I object to everything after "I personally did not"
13 in that answer.

14 Q. Can you describe your understanding
15 of the circumstances under which Robert Evans and
16 Carrie Evans had left the hospital?

17 A. I have no specific knowledge as to
18 the details under which they left. They didn't
19 leave at the same time. Rob Evans left several
20 weeks earlier. I know he left rather suddenly. I
21 don't know the details.

22 Q. Was it your understanding when this
23 Cushman & Wakefield report was ordered that it was
24 important for the hospital to carefully review any
25 decisions that they had made?

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1 MR. CAMBRIA: Object to the form of
2 the question.

3 MR. PIZZI: Object to the form.

4 Could you read it back?

5 (The pending question is read by the
6 Reporter.)

7 A. I wouldn't put it that broadly. We
8 anticipated that we were going to be asked the
9 question whether the purchase price was determined
10 objectively. Since Rob Evans was gone, we didn't
11 have the benefit of his knowledge.

12 Q. So when Cushman & Wakefield was asked
13 to review this, this was a case of Lindabury making
14 sure that Evans had not entered into a transaction
15 at less than fair value?

16 MR. PIZZI: Objection.

17 MR. CAMBRIA: Objection to the form
18 of the question.

19 A. The purpose was to provide evidence
20 that the purchase price was a reasonable one.

21 Q. And when you received the Cushman &
22 Wakefield report of November 22, this was, I guess,
23 approximately two weeks before a closing was
24 contemplated, where the title to the property would
25 exchange hands at a \$2,000,000 price, correct?

1 A. That's correct.

2 Q. Now, the report of Cushman &
3 Wakefield is marked "Draft." Did you have any
4 understanding as to whether the \$2,000,000 price was
5 subject to further changes?

6 MR. PIZZI: Objection, no foundation.

7 A. No. This report was not ordered in
8 the context of the sale to Omni. This report was
9 obtained in the context of being able to provide
10 documentation if requested in connection with the
11 bond issue.

12 Q. I guess let me just backtrack. So
13 the report had a different purpose than the Omni
14 transaction? It wasn't related to Omni, per se?

15 A. That's correct.

16 Q. But I guess my question is: Did you
17 have an understanding that the closing that you were
18 about to attend was at a transaction price where a
19 professional organization, such as Cushman &
20 Wakefield, had at least preliminarily in draft form
21 told you it's a square price, it's a fair price?

22 MR. PIZZI: Object to the form.

23 A. We were aware of what the report said
24 prior to the closing.

25 Q. And were you aware that this

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1 \$2,000,000 figure was sufficiently developed,
2 professionally developed and, if need be, you could
3 have asked Cushman & Wakefield to sign the report?
4 It wasn't just a number that appeared there
5 randomly?

6 MR. PIZZI: Objection.

7 MR. CAMBRIA: Object to form of the
8 question. I don't think this witness has said
9 anything at all about the propriety or the validity
10 of the opinions that are expressed in this report
11 and I don't think he would be qualified to do so.

12 A. The report says what it says. I'm
13 not a real estate appraiser.

14 Q. Right. But I mean do you have any
15 reason to believe or a basis to believe that this
16 number was artificial, fictional, not reliable?

17 A. No. I have no reason, no basis --

18 MR. PIZZI: Object

20 Q. Just for argument's sake, so it's
21 clear, you were the closing attorney. Did you also
22 negotiate the language of the contract with Gruen?

23 A. Yes.

24 Q. So you were familiar with the
25 provisions of the contract itself?